Justice as institutionalized freedom.
A Hegelian Perspective

Axel Honneth

One of the greatest constraints under which political philosophy suffers today is its uncoupling from social analysis and, consequently, its obsession with purely normative principles. This isn't to say that the theory of justice does *not* have the task of formulating normative rules that can be used to measure the moral legitimacy of the social order; but rather, that these principles, as they are currently propounded, are mostly isolated from the ethical life of given practices and institutions, so that they have to be ‚applied' to social reality secondarily. The conflict of ‚is' and ‚ought' that emerges here, or, to put it in another way, the philosophical reduction of moral facticity, is the result of far reaching developments in theory that are not insignificantly joined to the fate of Hegel's philosophy of right. A fate that has, on the one side, led to the loosening of the ties between the philosophical theory of justice and social analysis, while, on the other, provoked a just as momentous separation of sociological theory from normative theories of freedom and justice.

This essay is part of a larger project that takes up the task of bridging this divide in order to develop a theory of justice anchored in contemporary social analysis. In order to be up to date, such a project must be in alignment with of modern theories and conceptions of justice, meaning that it must connect the legitimation of a just social order with the modern hypergood

of the individual's 'self-determination' or 'autonomy'. No modern theory of justice can refrain from grounding its legitimacy in the freedom of the individual or the self-actualization of social individuals. On the other hand, such a theory must also take into account the insight of sociology and social analysis that almost all of the collective real forms of human freedom have social contents and goals that have to be developed and reproduced within the community.

The concrete task of legitimating a concept of justice in relation to individual freedom may seem clear, but it is actually as unclear and as ambiguous as the modern concept of freedom itself. Modern philosophy as well as contemporary social practice takes into its purview not simply one single concept of freedom, but at least three competing concepts, which can serve respectively as the normative basis of our conceptions of justice. Thus, justice in modernity is conceived by way of developing a negative, a reflective and a social concept of freedom.[1]

1. Negative and reflective freedom

The *negative* idea of freedom, which goes through Hobbes' absolutism, Locke's liberalism and Nozick's libertarianism, runs as a common thread through the modern project of legitimating the state's form of governance and the laws of justice. In these models the forms of the governing order and its justice are legitimated with reference to the mutual wrongs that 'free' individuals in a state of nature would do to each other. The state is justified, so to speak, by the fact that it lessens the „costs" of freedom of action experienced by individuals in a state of nature without regulation. As a conception of justice, this model suffers from two great problems: first, it leads only to a singularly egotistically motivated idea of justice, and this is hard to reconcile with the claim that that justice is normally (also) motivated by virtue or at least derives from a non-egotistical perspective. Secondly, this concept of freedom is so primitive that it doesn't allow us to label, for example, overwhelming inner compulsions as kinds of 'unfreedom'.

Such problems account for the increasing interest in a new, *reflective*

idea of freedom, stemming from Rousseau, Kant und German idealism. The reflective concept of freedom takes its departure from the obvious gap in the negative freedom concept: the latter lacks any *substantive content*. The negative conception of freedom can thus not distinguish between purely emotionally guided actions and morally autonomous actions or self-determined ones that are rational in other respects, even though in everyday practices we would speak here of greater or lesser impression of freedom. Our defenders of reflective freedom do justice to exactly this difference between simple freedom of action and substantial freedom. And thus there arises three *substantive* models of reflective freedom with Rousseau, Kant and Herder: respectively, an authenticity-based, an autonomy-based, and a self-actualization oriented concept of freedom. These three models make possible different response strategies to the question of justice even as they all aim to go beyond the negative model. While it is harder to use the authenticity concept as a basis for justice, the idea of founding the idea of justice on autonomy and self-actualization dominates contemporary philosophy. With Habermas, Apel and Rawls, the Kantian idea of autonomy has found a new form, and perhaps it most influential one, in theories of justice based on the theory of communication and constructivist premises. In as much as the concept of autonomy is foundational for these theories, a concept of justice must be devised that is largely procedural and distributive.

In the matter of grounding justice in self-realisation, the situation shows itself to be distinctly more complex. All resulting models have this much in common with the autonomy-grounded theories: they too advocate substantive models of justice. But at that point unity ends. Two main traditions can be identified: Coming from Mill, there is a rather individualistic conception of justice, which propagates the „social resources or conditions" of individual self-actualization. Coming from Tocqueville, we have another – a republican – tradition of justice, which understands self-actualization essentially as a common, cooperative enterprise, and to that end may even integrate acts of societal solidarity into the concept of justice.[2]

As this coarse overview shows, ongoing concepts of justice aren't easily enjoined with the idea of reflective freedom. In fact, to be sure, all the above sketched out ideas are distinguished by their opposition to the justice model of negative freedom, since by their positing not a social system of egotism, but instead one of cooperation: the degree of synergy of the individual subjects which has to be assumed solely in order that favourable social conditions for the realization of reflective freedom exist is incomparably higher than is the case of purely negative freedom. But beyond this rather formal mutuality, we see at once a number of differences disclose themselves here which are, essentially, compatible with the possibility of conceiving reflective freedom on the model of self-lawgiving as well as of self-actualization. And according to which of the two models we select as our foundation, the basic institutions of the just order (those institutions that are meant to socially guarantee the realisation of freedom) will be characterized completely differently. To be sure, the method through which in both cases the corresponding ideas of justice are realized is still the same: Out of the presuppositions of reflective freedom, be it of the self-determination or the self-actualization variety, ideas are deduced as to which institutional conditions would be required to enable all individuals to reap the fruit of their respective freedoms.

Neither of the two models of reflective freedom actually make reference to the freedom could be practically realized, even if only as simply an aspect of freedom; such assumptions are given consideration only when the question of the just social order turns on the possibility of realizing the latter within a society. Basically, therefore, the ideas of reflective freedom are stopped before reaching the very conditions by virtue of which the realization of freedom they characterize could solely be completed. By sheer artifice, the determination of this freedom bypasses those institutional conditions and forms that must always be added to nascent reflection in order to see it through to a successful conclusion. The idea of self-determination itself contains as a further moment of its development at least one social assumption, which is that the moral goals

are institutionally tractable - just as to the idea of self-actualization one must add categorically that the goods that correspond to its desires are socially available. But in both cases such conditions first come into play after the performance of freedom has already been fully determined; they are added externally, as elements of social justice, but are not thought of as innate to it. Only the discourse-theoretical determination of the field of reflective freedom constitutes an exception to this logic of supplementarity: because the performance of reflective practices here is bound to the condition of participation in discursive organizations, the social institution of discourses ought not to be interpreted as so many external extensions, but as a component of freedom. Such institutional extension of the concept of freedom uses the third, „social" concept of freedom as its guiding principle. According to this idea, the idea of reflective freedom cannot unfold without implicating the institutional forms that will make possible its realization.

2. Social freedom as the basis of a theory of justice

The communication theoretical model of discourse that Karl-Otto Apel and Jürgen Habermas have jointly developed offers a concept of individual freedom which, while yet remaining within the territory of the reflective, already points to another territory, that of a social freedom. For, in distinction to the dominant, monological interpretation of reflective freedom of which here the claim is made, only intersubjective discursive cooperation will make possible the kind of rational self-control which constitutes its inner core (Wartenberg 1971, p. 187 ff.). What is „social' about this new, discourse-theoretical interpretation of freedom is the circumstance that we no longer see a given particular institution of social reality as a supplement, but instead as a medium and the condition of the realization of freedom. From this perspective, the individual subject can only, bring about the reflective acts that are inherent to self-determination when it cooperates in a social organization with others, who reciprocally realize this same kind of action. The institutional actuality, in this instance discourse, is no longer something that must be intellectually added to the

selected concept of freedom in order to get to an idea of social justice, but instead is an element of the realization of freedom itself. It is not until institutions of these kinds are given in social reality that the individual in its framework can realize the kind of voluntary determination that is mandatory for reflective freedom.

Of course, in discourse theory this social turn remains suspended between transcendentalism and institutionalism, value idealism and social theory. That the individual has to be identified with a participant in conversation in order to affirm his will and therewith gain the experience of freedom, is conceived here once as an ahistorical, rational fact, and then again as a historically efficacious necessity. But the premise of the intersubjectivity of freedom is never taken to entail the fact that a structure of institutional practices is required simply to put in motion this process of reciprocal self-determination. – This fact is never filled in. The term „Discourse" in discourse theory is understood either as a transcendental occurence or as a meta-institution, but never as a particular institution within the mulitiple instances of its social appearance. What is lacking here is a decision for historical concreteness, that would need to be combined with the premise of communication theory in order to accrue insight into the institutional foundations of freedom. Thus, although everything pointed to this moment in the approach of Apel and Habermas, that work never could cross the threshold to a social concept of freedom. Only in looking back to Hegel, on the other hand, can we see the outline of how it should be possible to conceive specific institutions as the media of reflective freedom.

Hegel develops his own conception of freedom, that we shall label ‚social' here, in agreement with Frederick Neuhouser,[3] primarily in the context of his philosophy of right. The point of departure for his thinking is a critique of two ideas of freedom, which is parallel, if not in all details, at least in it essential features, to the two ideas of freedom that we have distinguished up to this point. While the idea of negative freedom, to use our terminology, must founder on the fact that the 'content' of the action cannot itself be conceived as ‚free', the idea of reflective freedom

is deficient because it opposes action, the substantive content of which is now free in as much as thought is self-determined, to an objective reality, which is in turn to be conceived as still completely heteronymous to freedom.[4] It is easy to see that Hegel's reproach against the second model of freedom is complementary to that he brought up to begin with against the first model of freedom: if there the lack lies in the fact that freedom does not extend into the self-relation of the individual's subjectivity, so, here, with reflective freedom, the decisive deficit consists in the fact that the now interiorized freedom does not extend out again to the sphere of objectivity. This second course of thought, which is not yet as familiar to us as the critique of negative freedom, loses some of its abstractness when it is related to the formulas with which we have characterized freedom all along. We saw that this idea of freedom, which presupposes a reflective performance of the individual insofar as it requires either an act of self law-giving or a determination to realize ones wishes: I am free only in the degree in which I am in the position to orient my action to autonomously set goals or authentically decided wishes. If we relate Hegel's objection to this idea, we can see that nothing in it seems to guarantee the realizability of reflectively determined goals. While, certainly, the extension of freedom into the subject's interiority ensures that actual features of freedom will be composed only of those intentions which do not obey some alien authority, the possibilities for their realization are kept completely out of sight, as though irrelevant. Hegel would obviously like us, then, to go to a third model of freedom that would overcome this gap, insofar as even the objective sphere of reality should be subject to the criteria of freedom. Not only individual intentions, which should come about without any foreign influence acting upon them, should satisfy the rules of freedom, but also the external social reality should be arranged in such a way that it should be free from all heteronomy and every constraint. The idea of social freedom, accordingly, should be understood as the result of a theoretical effort to extend the criterion that engenders the thought of reflective freedom even to that sphere which usually confronts the subject as external reality.

Obviously, the mention of this goal already shows how difficult it has to be to act so as to really execute it. While the realm of individual dispositions and goals may provide us with an adequate number of criteria out of everyday life that give us the means for distinguishing between free and unfree, with regard to the sphere of social reality, those kinds of intuitions seem to complete fail us; at least we cannot simply spontaneously list a series of viewpoints that would allow us, in the realm of social institutions, to make distinctions between degrees of freedom. Yet Hegel himself seems to call upon some such ordinary experience when he observes, in the addition to § 7 of his ‚Philosophy of Right,' that ‚friendship' and ‚love' give us an example of freedom in the exterior sphere of the social: „Here one is not onesidedly in oneself, but instead one limits oneself only too gladly in relation to another, knowing oneself even in this limitation as oneself. In the determinate, a person should not feel determined, but instead, while one sees the Other as Other, one first gains the feeling of self."[5] Although Hegel wanted to be able to limit this expository instance to the plane of simple „sentiment," yet in the therein applied term of „to be itself in the otherness" is contained the key of his concept of social freedom; it is grounded in a representation of social institutions which can let the subjects interrelate in such a way that they could conceive their opposite as an Other to their self.

3. Recognition as the form of social freedom

From the very beginning, the key to Hegel's idea of freedom has been the category of ‚mutual recognition' (Hegel 1986). As an isolated subject, the person in all his reflective freedom remains cut off from the outer world of social organization and institutions. No matter how well she or he succeeds in limiting his actions to only autonomously determined goals, their implementation still remains uncertain in objective reality. The striving for freedom ceases to amount to an element of subjective experience as soon as the subject encounters another subject, whose goals relate to his own in a complementary fashion, for now the ego, in the exertions of interactive partners, can glimpse a piece of the external world

which may allow it to transform its autonomous goals into objective ones. By „mutual recognition" is meant at first, viewed like this, only the reciprocal experience of envisioning oneself confirmed in the wishes and goals of the person opposite to the extent that his or her existence represents a condition for the realization of one's own wishes and goals. Under the condition that both subjects recognize their need for the complementarity of their relevant goals, and they thus see in the person opposite the Other of their own self, the freedom that so far was only reflective now extends itself to become intersubjective. Hegel, at this point, constructs the connection to the concept of the „institution" or „medium" by declaring the existence of normative behavioral practices to be a social precondition for such a recognition of the complementarity of goals and wishes: both subjects must have learned to intelligibly articulate their present goals for their opposite number as well as correctly understanding the Other's expressions of the same thing, before they can recognize one another in their mutual dependence. According to Hegel's theory, such reciprocal intelligibility is guaranteed by instituted recognition, or that bundle of normativized behaviors making it possible to objectively understand interdependent individual goals. These behaviors make certain that the subjects can recognize the alter ego's wish, the fulfilment of which would be a condition of the fulfilment of one's own wish. But since in this way the striving of freedom of individuals is satisfied only within or with the help of institutions, for Hegel, the „intersubjective notion of freedom" has to be again enlarged to a „social" concept of freedom. The subject is ultimately only ‚free' when it encounters its opposite number* (Other) in the framework of institutional practices to which it is thus bound by a relation of mutual recognition, since it can glimpse in the Other's goals a condition of the realization of its own goals. In the formula of „being-with-itself in the other" there is thus always already implied a reference to social institutions warranting by coordinated, regulated practices the mutually recognition of participating subjects as others of themselves. And it is only in such forms of recognition that individuals are at all enabled to transmit and realize their reflectively gained goals (Neuhouser 2000.).

Only as long as Hegel believed that he could explain the ethical unity of modern societies directly out of the emotional bonds of subjects, could he plausibly model the social structure of freedom primarily on the love between man and woman. In the love relationship, where freedom is no longer mere desire but already reflective and presents itself as erotic attraction, we find the emergent reflective freedom of two subjects gaining fulfilment through mutually recognizing each other as beings who are conscious of their interdependence:

> Longing thus frees itself from the relation to enjoyment, becoming the immediate one-ness of both in the absolute being-for-itself of both, or becoming love; and the enjoyment consists in this apperception of itself in the being of the Other's consciousness (Hegel 1986, Fragment 21, p. 212).

That Hegel by this ,immediate' form of recognition already has a particular institution before his eyes is primarily revealed by his marginal notes, in which he, as though in contrast, enlarges on the older – for example, chivalrous – constellations of the love relationship.[6] Only under the historical condition, that the modern, romantic ideal of love is substituted for such relational models in social praxis, could two subjects be connected to each other in this way, coming to see reciprocally one in the other the realization of their erotic liberty. So, already Hegel's early conception of love alludes to an institution that is thought of as the enabling social presupposition that makes the corresponding recognition relationship happen at all.

Hegel soon took his increased focus on the newly emerging political economics of his time as the incentive for expanding his recognition theory. If the structure of modern societies, as this new discipline claimed, is always also characterized by its allotting an independent sphere to the economic market, then its ethical unity can no longer be sufficiently conceived by means of the recognition relationship of love alone. Rather, the expanding domain of market-mediated action must

also harbour its own freedom potential, because otherwise it would be inexplicable why it found moral adherence so quickly among the greatest part of the population. In order not to have to surrender his original insight, in the face of this new development, that freedom always presents an institutionally bound recognition relationship, Hegel had to make a plausible argument showing the extent to which the economic market represents such an institution of recognition. His ingenious solution, prefigured already in the Jena writings, consists in the assumption that the subjects in the market sphere have to mutually recognize each other for the reason that the subjects perceive in their opposite one who, as an economic supplier, guarantees the satisfaction of their purely egocentric demands; thus, Hegel concludes, freedom possesses even here, in the seemingly perfectly atomized realm of market activity, the institutional structure of an interaction, since only through reciprocal recognition of their dependence on each other can the individuals achieve the fulfilment of their goals. Interpreting the market as a new, indirect form of „to be itself in the otherness", means learning to understand that this institution creates a recognition relationship through which individuals can enlarge their freedom.[7]

The consequence of this inclusion of the market in his conception of freedom for Hegel is that he learned to interpret the society of his time as a historically layered relationship of recognition relationships. In the end, in his *Philosophy of Right*, he came to see a differentiation of three of those kinds of institutional complexes, distinguished among themselves by what individual ends or goals would be satisfied by mutual recognition. But always along the path leading to this point, Hegel retained the idea intact that the freedom of individuals is finally only implemented in that space where they can participate in institutions whose normative practices assure a relationship of mutual recognition. At first Hegel's reasons for this idiosyncratic conception seemed to be found only in the completion of a purely logical operation. The negative concept of freedom failed to include subjectivity which, on its side, we have to be able to imagine as somehow free; and the concept of an inner, reflective freedom that arose

out of the resulting concept failed to include objectivity, because outside reality has to be thought of as a sheer heteronomous sphere. In order to overcome the failures of both conceptions, we require a third concept of freedom that can represent subjectivity and objectivity, the particular and the general, in their reconciliation. But as soon as Hegel tries to make this conceptually gained construction plausible by approaching our life-world experiences, it emerges that he is on the trail of an extremely convincing idea; for with the suggestion of including objectivity itself in the determination of freedom, one observes, with a certain justification, that we cannot experience ourselves as being free as long as we don't find in external reality the presuppositions for the implementation of our self-determined goals. All formulations by which Hegel criticizes the standpoint of inner, reflective freedom immediately tend to this insight: if freedom is taken to be exclusively a „faculty", namely an ability, to be able to be led in one's actions only by one's own, self-determined goals, we would "[consider] the relation of the will to what it wills or reality as an application to a given material, which does not belong to the essence of freedom." (Hegel 1970, p. 61)

One should remark that a weak and a strong version of this third position according to which the objective presuppositions for its realization belong to „the essence of freedom itself", can clearly be distinguished; and the peculiarity of the Hegelian idea of social freedom consists in decisively laying out an interpretation of the strong version. According to a weak reading, the inclusion of objectivity should imply that our ideas of autonomy or self realisation remain incomplete, so long as we do not conceptually comprehend therein the social resources for realising our corresponding goals. Joseph Raz represents a contemporary variety of this interpretation when he shows that it would be highly implausible, by reason of the circular relationships between chosen goals and institutional arrangements, not to add on such ‚social forms' as the conditions for the concept of autonomy itself (Raz 1986, p. 307 ff). But as near as Raz comes to certain aspects of Hegel's doctrine of freedom, there still remains a deep fracture dividing him from the Hegel's central intuition. For Hegel

not only wants to reveal the social conditions of reality that enable the realisation of self-created goals. Rather, Hegel wants to see the very ‚stuff' of reality so liquefied that the structure of reflective freedom itself is rediscovered, mirrored within it. The world of objectivity is supposed to confront the individual's exercise of freedom so that it to a certain degree converges with what the subject reflectively intends. This strong ontological claim is only fulfilled when other subjects belong to this outer reality, and the goals these other subjects have set demand that the first subject carries out exactly what he or she intends to do; for in this way the objectivity in the exemplary shape of such co-subjects may be imagined in such a way that what objectivity wants or demands from subjectivity is to realize itself in its reflectively determined freedom'.

This strong reading of the objective presuppositions of the enlarged concept of freedom is what Hegel is trying to defend with his concept of ‚recognition'; this is in order to characterized a structure of reconciliation should not only between subjects, but between subjective freedom and objectivity. In the recognition relation the subject encounters a (on its side subjective) element of reality, through which it sees itself affirmed or even commanded to realize its reflectively gained intentions. For only through this realisation does this objective element on its side gain satisfaction, because as much as the subject it is pursuing goals, the realisation of which demands the carrying out of the intentions of its Other. Of course, it is easy to see how, in consequence of this sketched out construction, Hegel has to have both sides serve only such goals or intentions that are, in a very fastidious sense, ‚universal': it can only come to a mutual recognition in this sense when the goals of both parties are so supplemented that their fullfilment only comes about through complementary action. What has been called, above, the ‚supplemental necessity' serves thereto as the presupposition of the form of freedom realized in the recognition relation. For individual freedom to take effect in objective reality, and thus in a certain sense to be reconciled with the latter, the subject must want to realize goals whose achievement presupposes other subjects possessing autonomous and complementary goals. Hegel must thus let a process

precede the attainment of social freedom in which the subjects learn to limit themselves essentially to such wishes or intentions as are ‚universal', in the sense of requiring supplementation. Once they take control of this sort of autonomous goal, then they can experience, in the corresponding recognition relationships, that they are „with themselves in the sphere of objectivity"(Hegel 1970, § 28, p. 79).

To engender such an universalisation of wishes and intentions upon which his whole doctrine of freedom is concentrated, Hegel once again requires institutions. To this end, he allows himself to be lead by the essentially Aristotelian idea that the subjects learn under the influence of institutional practices to accommodate their motives to its internal goals. At the end of this socialisation process stands a relatively stable, habit forming system of aspirations letting the subjects aim precisely at those objectives that have been anchored in praxis-embedded normative habits. When the individuals now grow up in institutions in which normative practices of reciprocity have been enacted for some time, they will then learn in the course their ‚education' how to limit themselves in their conduct to those wishes and intentions which can be satisfied only through the complementary actions of others.[8] As in a virtuous circle, socialisation in institutional complexes of recognition takes care of the fact that the subjects learn to develop universal, supplementary and interdependent goals, which they can later only achieve through reciprocal practices, which in turn is the power that keeps these institutions alive.

There are thus two essential tasks which in the Hegelian doctrine of freedom must be undertaken by those institutions -contained within the Hegelian doctrine of freedom – in which recognition relationships are to endure. One is that they concern themselves in their mediating role with the particular classes of expressions of their members so that they could be mutually understood as requirements to realize complementary goal setting in common. Only on the basis of such intersubjectively binding rules and symbols do individuals universally come to some agreement to identify with one another and to each realise their goals and intentions. In this sense, institutions of recognition are not simply

the annex to or external presupposition of intersubjective freedom; since without them the subjects can't know about their mutual dependence on each other, but instead provide at once the basis and sites of freedom's realization. On the other hand, these same institutions also bring it about that their individuated members are enabled, for the first time, to gain an intersubjective understanding of their freedom in general; for only through growing into practices whose sense is the common realisation of complementary goal-making do they learn to understand themselves as self-conscious members of freedom preserving communities. In this way, Hegel can conclude that individuals only really experience and realize freedom if they participate in social institutions that are formed by mutual recognition relationships.

4. Social freedom in the post-hegelian tradition

Although this concept of social freedom seems to possess expressly eccentric and even extravagant features, it has not remained without influence. Even Marx allowed himself to be lead (perhaps unconsciously) in his early writings by Hegelian intuitions, when he made social cooperation into the model instance of freedom.[9] That concept of individual self-actualization, that we have already met as a particular shape of the idea of reflective freedom, works as the point of departure for his reflections: the human individual is only free to the extent that he succeeds in articulating his ,real', authentic needs and wishes and realizing them in the course of his life. For Marx, however, this then very common model remains much too abstract as long as it is thought of only as it was by Herder and his disciples, in relation to language and poetic creativity; instead, following Hegel whose „Phenomenology" he is intimately familiar with from 1837 onwards, he wanted to interpret the process of self actualization on the model of some exemplary activity in which the individual objectifies his ,individuality', his peculiarity, and ,in the contemplation of [manufactured – A.H.] objects enjoys to the full his personal abilities.[10] Thus, he foresees a social arrangement or institution in which this form of mutual recognition has lost its

simply transitory existence and has been implemented with enduring universal adherence. In cooperation, understood as the real „bond of our productive faculties for each other",[11] subjects can recognize themselves reciprocally in the necessary supplementarity of their natures. For Marx, cooperative production represents the institutionalized median between the individual freedoms of all members of a common organisation. If they don't participate in this institution, and are thus excluded from cooperation, they can't realize themselves in their productive activities, because they would lack the practical supplemental contribution of another subject who recognizes in his production their needs.

Marx during his lifetime never gave up this specific conception of social freedom; he always believed that the reflective freedom of individuals is effective there where its own, productive self-actualization is created in being supplemented through the self-actualization of others. Already in Marx, the early writings' sketched out concept served as the normative background of a social critique that goes far beyond the intention that Hegel connected to his theory of freedom. While Hegel wanted to create a conceptually expanded and deepened basis for liberalism by highlighting the latter's need for freedom preserving institutions, Marx has in mind a critique of the mode of socialisation in capitalist society in general. As soon as the productive activities of individuals are not coordinated with each other directly through the mediating instance of cooperation, but instead through the „alien mediator"[12] of money, Marx argued, the relations of mutual recognition are obscured, so that in the end each sees himself as a solitary, accumulating, self-seeking being. Capitalism, which lets traffic in money take the place of cooperation as the mediating instance, creates social relationships, in which „our mutual supplementarity" is only a „simple semblance" supported by „mutual plundering."[13] Although Marx in the course of his further work would change and nuance this image, it yet remains intact in its general features all the way up to his late work: Even in the mature Critique of the Political Economy – *Das Kapital* - the capitalistic social formation is criticized before everything else because it

engenders the material appearance of materially mediated social relations that lets the intersubjective structure of freedom be eclipsed.

5. The ethical life as institutional prerequisite for freedom

The Hegelian and Marxist concept of freedom have in common that the achievement of freedom is bound to the presupposition of participation in institutionally regulated practices, and that in this way the institution in question is not an external condition or supplement, but the internal medium of individual freedom. For Hegel, institutions have import in the concept of freedom itself, because their intersubjective structure requires that they lift the external burden of necessary coordination. In the unfolding practices that are objectified in an institutional construct, the subjects can nearly automatically tell what they have to contribute in order to achieve the common possible realisation of their goals. Thus, Hegel can't countenance merely any arbitrary institution as part of his concept of freedom; he must rather limit himself to those constructs in which those recognition relations are fixed, making possible an enduring form of the mutual realisation of individual goals. The category of recognition which Hegel uses as a key to define the intersubjectivity of freedom, is also the determining factor for his interpretation of institutions: because such complexes of normatively regulated behavior have to satisfy the goal of constructing for subjects a social model of the reciprocal realisation of freedom, these complexes must themselves represent congealed forms of mutual recognition. Hegel thus features institutions in his theory of freedom only in the shape of enduring embodiments of intersubjective freedom.

We have seen that each new idea of freedom emerging in the features of the philosophical discourse of modernity corresponds with an alteration in the concept of social justice. On the path that goes from Hobbes by way of Rousseau up to Kant and Herder, the structure of individual freedom is not only ever more strongly indicated in terms of its reflectivity, but, in tandem, grow the methodical claims to the grounding of justice that are put upon it.

Neither Hegel nor Marx could naturally deem the conceptions of justice that arise out of the particular concepts of freedom of their predecessors as being either persuasive or correct. Against the contractual construct that, the theoreticians of negative freedom use as a means to the enactment of social justice, they both even have the same objection: if the hypothetical contract is supposed to be a consensus among subjects exclusively oriented to their own selves, the resulting social order can also rest on nothing other than a well ordered system of private egotism. But this is simply to miss what constitutes the actual reality and prospect of Man, namely, a kind of freedom, in which one person helps the other to self actualization.[14] But only Hegel cares to also maintain objections against the other justice conceptions of the previous tradition; for Marx, on the other hand, such further nuances are of little interest, because he is profoundly convinced that the interest in abstract principles of justice merely mirror a need for the legitimation of the ruling social order. Even Hegel's critique is not much more subtly worked out, but throws a hint into why he thinks of procedural additions in the spirit of Kant as faulty. From his point of view, such theories are caught in a vicious circle, because in order to construct the proceduralist aspect, a whole culture of freedom must be assumed, whose institutional and habitual factors cannot, on the other hand, be taken to be already grounded. Such contents or material substances are construed as merely external outcomes of the application of the procedure, while, these external factors, these social conditions, are always required for the implementation of the procedure:

> By such a method everything essentially scientific is cast aside. As regards the content there is cast aside the necessity of the self-contained and self-developed subject matter in itself, and as regards the form there is discarded the nature of the conception.[15]

For Hegel it is unquestionable that this circularity, with all the defects of the presupposed concepts of reflective freedom, hangs together. Because the proceduralistic theories apply a concept of individual freedom,

in which the subjectivity itself, but not yet its outer reality, is thought of as „free", they can limit themselves to the defining of justice in the statements of a reflective process without concerning themselves with the corresponding presuppositions in the institutional reality of society. For Hegel, there consists an internal concordance between the concept of reflective freedom and proceduralistic justice theories, because the latter's exclusion of objectivity is mirrored in the limitation to defining justice on purely formal principles. To this extent, Hegel is opposed to the whole schema of the division between justification and application, of procedural justification and succeeding application of presumptive outcomes to a given matter. If the supposed concept of freedom contains its orientation to institutional relations out of its own nature, then it must follow that the essence of a just social order must also be given as though of itself. Between the justification and application, according to Hegel, there simply can't arise the whole logical divide that proceduralistic social theories, following in the wake of Kant, commonly think is found there. If objectivity, namely the intersubjective structure of reflective freedom, be only carefully enough traced, an overview of the communicative practices and institutions arises, which, taken all together, defines the conditions of social justice.

Conjoined with his critique of proceduralist justice theories, Hegel thus unfolds the sketch of another, alternative grounding procedure, consisting in grasping the presentation of individual freedom partly within its institutional composition so that on the same level of presentation the outline of a just social order will also show itself. Of course, Hegel has a peculiar problem here, because he must know in advance what goals of the subjects are of the kind that they can be realized only thanks to institutional mediation in uncoerced mutuality. While Kant can satisfy himself, in his proceduralist approach, with assigning to subjects all conceivable goals and intentions as long as they satisfy the conditions of (moral) reflectivity, Hegel cannot be satisfied with such a pluralism of individual ends. Because he wants to make the just order directly equivalent to the sum of social institutions that are necessary for the

realization of intersubjective freedom. Thus he has to fix those ends in advance that individuals could only reach together in mutuality. We can't directly say that Hegel shows great transparency in his unavoidable fixing of such ends: the presentation of his own program is pursued instead so strongly in the language of his whole critique of reason that independently of it the process can be neither justified nor even presented. But perhaps it can be said using an independent terminology that in accomplishing the adumbrated task, Hegel applies a method that is supposed to create an equilibrium between historical-social factors and rational considerations. In the course of making a corrective comparison of reflection on what goals individuals should rationally pursue and empirical definitions of necessitated socialisation in modernity, gradually those ends do become visible that subjects must realistically follow in order to actualize themselves under some given circumstances. We could just as well call such a method, on the lookout for an agreement between concept and historical reality, a process of „normative reconstruction". In order to make even clearer how Hegel goes about this business: guided by a general determination of what rational subjects can rationally want, we are to distil out of the historically given relationships those goals that subjects actually pursue, while maximally approaching the conceptual ideal. Hegel must thus put himself in the perspective of social theorists and philosophers when he tries beforehand to name the universal ends of freedom. On the other hand, he has to conceptually outline the goals that all human subjects should rationally set themselves, in order to balance these against the existent empirical intentions to which individuals tend because they grow up in modern culture. Those autonomous goals, which the historically situated subjects follow as rational modern beings, should appear in the sequel, formally approximating the determinations of the ideal type.

Certainly, Hegel himself wouldn't have called upon any of these descriptions to characterize his methodical procedure; rather, in his work it seems as if he wants to develop the subjects' liberatory ends directly and

immediately out of the concept of a historically unfolded spirit. But it makes complete sense to use an independent, freestanding descriptive language to make clear that Hegel's chosen method has an existence apart from the background of his Spirit metaphysics. As we've seen, Hegel stands before the problem of having to express something substantive about the goals and wishes modern subjects want to pursue in the framework of their individual freedom, because he wants by means of such general goal-making to stabilize the institutional complexes, the institutions of recognition, which all together make up a just order in modern society. If in the balancing out of concept and historical reality we now see which ends the subjects within given circumstances ideally pursue, then Hegel can move on to sorting them against corresponding institutions. Each of these institutional complexes should therefore offer the assurance that the subjects will experience their freedom as something objective, because they must perceive the external conditions of the realization of their individual goals in the institutionalized roles of Others. The number of institutions that Hegel must thereby distinguish, are to be determined strictly by the number of goals that he believes individuals can be subordinated to as universalized goals in modernity, since to each of these goals there must correspond an institutional structure that can enduringly support the practices of reciprocity, therein assuring intersubjective satisfaction.

Hegel names the sum of these kinds of structures, as is well known, with the concept of ‚ethical life' inspired by Aristotle: finally, only with this category in his theory do we get an outline of how social justice under conditions of the modern ideal of freedom, can be warranted. Hegel believes that a modern social order is „just" not simply when it can be proved to be the faithful impress of the results either of a fictional social contract or the popular will of a democracy. Hegel thinks such suggested constructions always fail in consequence of the fact that they assign freedom to subjects as co-workers on these processes which can't be earned without participation in institutions that are already just. Modern theories of justice conjure away the confusion into which they naturally

thereby fall by presupposing concepts of individual freedom which do not take into account that the latter's need for objective mediation, for satisfaction in reality. If it is a sufficient condition for freedom to act either without outer limit or to act within a reflective situation, then subjects can be thought of as sufficiently free before any binding to a social order. But if, on the contrary, the subject can only be imagined to be ‚free' in that space where his goals from reality are themselves fulfilled or realized, then we have to invert the relation of the legitimating process and social justice. First, we have to be able to think of these subjects as bound within certain social structures that guarantee their freedom before they can be vested as a free being in a process that guards the legitimacy of the social order. Hegel must place the sketching out of a just social order before any legitimation making procedure because the subjects must produce the individual freedom, which to taking part in such procedures would be required, only in socially just, namely freedom-preserving institutions. Thus Hegel's whole theory of justice comes out of a picture of ethical relationships, out of a normative reconstruction of this segmented order of institutions, in which the subjects in the experience of mutual recognition could realize their social freedom. And only in dependence on the existence of such institutional constructs as those which relevantly correspond to one of the ends, which subjects in modernity want to realize, do the legitimate securing procedures come into effect for Hegel too, just as out of them other theories of freedom seek their ideas of social justice on the whole.

To speak of an inversion of the relationship of social order and legitimating procedure doesn't at all mean, for Hegel, to renounce the role played by that latter placeholder kind of process in articulating a theory of justice in general. Its function should rather be added in the framework of a social order that is already given as „just", where, instead of grounding the social order, the process contains a placemarker for the individual's legitimation proof. Hegel rounds off the methodical architecture of his justice conception in making space for the right of the individual, on the basis of his social freedom, individually to check

and see whether the given institution lives up to its own rules. The institution of ,rights-freedom' as well as that of ,self-examination' are both expressly not conceived as ethical constructs, giving the subjects the civilly protected chance, if necessary, to distance themselves from all recognition relationships to which they owe their social freedom. It is clear that Hegel would thus like to integrate into his system of ethical living both other forms of freedom that we've met in the course of this paper. Through the acknowledgement of ,abstract rights', the subjects should have the possibility, to make use of their negative freedom under precarious circumstances. But through the recognition of their morality they should, on the other hand, have been in the situation, to be able to hold their reflectively gained opinions against the ruling order. But Hegel only allows both freedoms to a point, insofar as authentic freedom doesn't endanger the institutional structure of social freedom. They should only flank the ordered system of ethical institutions when they give the individual the right to legitimately turn away from their expectations, but not become a source of new social orderings. Whether Hegel would have been prepared, by a certain measuring of such deviations and objections, to concede a system breaking legitimacy to legal and moral freedoms, is an interesting question, but one we cannot pursue here.

The picture of methodical consequences that Hegel believes he can pull out of his concept of freedom for a theory of justice, is thus closed. Because Hegel's conviction is that the individual's freedom is first unfolded in institutions of recognition, he cannot bind the outline of such institutional structures cognitively to the hypothetical consensus of all potential members of society; for the production of a consensus like this (in the contract or in the popular democratic will) occurs under pre-conditions in which the subjects by lack of institutional commitments are not yet free enough, to actually dispose of a well informed perspective and opinion. As we saw, Hegel must therefore put the construction of a just order first, of a system of freedom protecting institutions, before knowing the decisions of isolated or united subjects. First one needs to design the frame of the institutions of recognition, in which the

subjects can achieve social freedom, before they can be, in a second step, endowed with the roles of taking as sketched out in the social order. Perhaps we can say summarily that recognition in institutions precedes the freedom of individual persons and the freedom of discursively related deliberations. On the other hand, Hegel also does not want to let the distance to the actual beliefs of historically situated subjects become too great, for he doesn't merely understand his presentation of the ethical order as a „construction", but as a „reconstruction;" not as the projection of an ideal, but as the faithful sketch of already given historically factual relationships. Those Institutions that are supposed to serve the subjects as stations of social freedom are not taken by Hegel from the drawing board of theoretical idealisations. Rather, as we have already seen in the case of his definition of universal goals, he wanted to distil such institutions out of historical reality--using his notion of freedom as a heuristic he tried to identity and characterize those institutional structures that come closest to the desired standards. Naturally, this methodology is supported by the teleological idea that in every instant we find ourselves at the farthest point of a historical process, in which rational freedom has developed step by step. It is only because Hegel believes in such a progress in history that he can be certain that in the society of his time he will meet with institutions which give the social, and thus developed form of freedom space and protection. A sufficiently large remnant of this historical confidence remains even when it is stripped of its metaphysical foundation and must make do without an objective teleology – for even then, under such altered conditions, Hegel's claim says nothing more than that the beliefs of members of society (that they belong to a social reality deserving of active support in comparison to the past) are mirrored in the vital work of maintaining institutions. Hegel can take the fact that these institutional constructs, embodying freedom off stage, as it were, are filled with ‚life,' in this minimal ‚transcendental' sense as an indication of a general consciousness of progress in history. As long as the subjects in their actions actively maintain and reproduce freedom-protecting institutions, this counts as a theoretical proof of their historical value.

6. Outlook: a processual concept of social freedom

From this point on, we can only further pursue the building up of Hegelian theory of freedom and justice in terms of the contents of its concrete implementation. In comparison to other models of justice that we've encountered on the way to a reconstruction of modern ideals of freedom, Hegel's possesses an essentially higher degree of saturation in historical fact. Because he has his eye on the kind of freedom that can only be realized in the form of participation in concrete institutions, he has to check and reference their existence much more strongly against and to historical reality than does Hobbes, Locke or Kant. With Hegel an historical index migrates into the conception of justice that makes it impossible to reduce it to universal principles or procedures. Instead it now would become necessary to observe the way his institution theory plays itself out, it being the integral part of his idea of social justice On the other hand, our reconstruction up to this point may also suffice to ground a thesis that can count as the summation of this collective overview. Hegel's idea of social freedom possesses a higher measure of agreement with pre-theoretical intuitions and social experiences than has ever been possible other ideas of freedom among the moderns. For socialized subjects it must represent a kind of self-evidence that the level of their individual freedom is dependent upon how responsive the surrounding sphere of actions is to their goals and intention: the stronger their impression that their ends are supported by, or even put into effect within this sphere, with which they regularly have to do, the more they perceive their environment as a space in which they could expand their own personality. The experience of such uncompelled, mutual play between the person and the intersubjective environment represents the pattern of all individual freedom for a being, who is oriented to interactions with its kind (Dewey 1930). That Others don't block one's own aspirations, but make them possible and demand them, constitutes the schema of free activity in social nexuses, before any individual tendency to retraction. This was the experience that Hegel wanted to incorporate in the concept of freedom with his formula of „being-with-oneself in the other". Thereby he was able to grasp our in-

tuitive ideas about freedom before the threshold at which they become thematised, if only in reference to a single individual subject.

Of course, other freedom ideals of the moderns also highlight natural aspects of freedom, as these take an enduring place in our everyday experiences. That we occasionally experience ourselves as ‚free' when we stubbornly hold out against the claims of normality, or that we are ‚free' there where we decide to stick to our own beliefs, all of this must constitute an essential moment in the thick weave of our social praxis an essential moment of that which we would call individual freedom. But such experiences certainly possess a secondary character as it were, because they present reaction formations to quarrels that are borne by our communications with other subjects – firstly we have to be entangled in these kinds of interactions before we can lay claim to those freedoms that we should have at our disposal as individuals or moral subjects. Dealing with others, social interaction logically precedes the distancing effects that are encoded in the features of ‚negative' or ‚reflective' freedom. Thus it makes sense to disclose an earlier level of freedom, which is at home in those spheres in which people or other beings inter-connect. Freedom means here, if we follow Hegel, the experience of a personal state of non-compulsion and expansion that flows out of the fact that my ends are advanced through the ends of others.

If we understand this kind of social freedom as the core of all our ideas of freedom, against which the other ideas we've discussed only hold derivatively, then we have to further infer a revision of our orthodox justice conceptions. What we call ‚just' in modern societies must no longer be simply measured in terms of the power of all members of society over negative or reflective freedoms, but instead must satisfy those measures processually, securing the possibilities of these subjects being able to participate in institutions of recognition. Therefore at the heart of the idea of social justice there migrates particular, normatively substantive and thus ethically designated institutions of legal security, of state protection and civil society. These institutional structures remain

alive only in the cooperative play of the division of labor between law, politics and the social public sphere, to which, in its different facets, the members of society owe their intersubjective freedom, thus on the whole the culture of freedom. Of course, we can also learn from Hegel that this kind of a structure can only persist in modern institutions of recognition when the subjects possess the acknowledged opportunity to test it in the light of his own plans and beliefs and in a given instance even to leave it. The interpretative schemata provided by the ideas of negative and reflective freedom, must be applied to the ethical institutions in the sense that they create the appropriate protocol to prove its legitimacy. With the integration of ‚subjective' freedoms into the body of institutionalized, ethical life, there emerges a dynamic already inherent in the theory, an openness and transgressivity that makes it hard in general to normatively outline stable institutions of recognition. If, that is, individual objection and institutional reality as such are to be thought of as interdependent in the sense that the ethical institutions primarily make possible an individual autonomy, whose activation leads once more to a revision of these institutions. This spiral movement precludes a point of stability such as would obtain in a well-structured system of ethical institutions.

As we have remarked, it isn't clear whether Hegel saw his own concept of justice embedded in such processual theory. To be sure, in the different texts around the *Rechtsphilosophie*, there are always indications that awaken the impression as though Hegel had already forestalled his future possible critics by including their criticism his stylized, normatively shaped description of an ethical institution.

If this were true, then he might have opened his ethical doctrine up to dynamic, even revolutionary changes that could result from frictions in his system of social justice at some point in the future. Hegel's *Rechtsphilosophie* would be, according to his own understanding of it, not a book for the rest of human history, but one for the middle station of his own day. But on the whole this is outweighed by the tendency to maintain that the process of the realization of freedom with the institutionalized ethical life of modernity has achieved closure. For Hegel, the institutions of the

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bourgeois nuclear family, the corporatively monopolized markets and the state seemed to indicate the end of the moral history of mankind. But we, who have sought to go through Hegel's project almost two hundred years after it was written, are naturally better informed. The forces of individualisation and autonomy, the potential of negative and reflective freedom, have set free a dynamic that penetrates into Hegel's own system of ethical life and has left none of the institutions in the normative circumstances in which he once imagined them. The culture of freedom, if there still is one, has assumed, today, a completely new shape, which makes it worthwhile once again for the brief moment of an historical epoch to normatively reconstruct it. The theoretical instruments required for such an enterprise have already surfaced partially in the context of our picture of Hegel's freedom concept. We require a historical-sociological anatomy of the classes of normative practices, in which today's subjects can so mutually satisfy their ends that, in the experience of this commonality, they can realize their individual freedom. It remains a question what it means in detail that different practices taken together build up the unity of one institution, which serves the reciprocal satisfaction of individual goals. Only in the in the course of implementation will it become clear that what is meant with these social structures are patterns of social action that contains certain categories of reciprocal commitment. Moreover, the essential task of the whole enterprise really consists in marking and tracing a circle about the exact place that should be taken by negative and reflective freedom in post-traditional ethical life. For from Hegel we learn, above all, that modernity's promise of freedom demands that we help individuals in all their legitimate freedoms to exercise their rights in the social order.

(translation: Roger Gathman with Johanna Seibt)

Endnotes

1 For a closer reading and typology of modern theories of freedom, see : Honneth 2003, Honneth 2001b and Raffnsøe-Møller 2001, p.5 ff.

2 See Taylor 1995 and Taylor 2003.

3 Neuhouser 2000 (on the conceptual use, see p. 5 ff.).

4 Hegel, *Grundlinien der Philosophie des Rechts, 1970. Translated as Philosophy of Right*, S. W. Dyde 1896.

5 Ibid, p. 57. [in S. W. Dyde's 1896 translation: ‚Here a man is not one-sided, but limits himself willingly in reference to another, and yet in this limitation knows himself as himself. In this determination he does not feel himself determined, but in the contemplation of the other as another has the feeling of himself.']

6 See for instance Hegel 1969, p. 202, Randnotiz 2.

7 This is the way, more or less, to understand the whole sections on ‚abstract rights' and ‚the system of needs' in Hegel 1970, s. 92 ff., 346 ff..

8 See Axel Honneth 2001a, Ch. 5.

9 See for instance.. Brudney 1998, Brenkert 1983, v. a. Chap. 4, Wood 1981.

10 Marx 1968, *Ergänzungsband, Erster Teil*, pp. 443–463, esp. 462.

11 Ibid. p. 460.

12 Ibid. p. 446.

13 Ibid, p. 460.

14 „eine not- und verstandes-Staat", Hegel 1970, § 258.

15 Hegel 1970, §2, p. 31; see also Rawls 2002, p. 427–438.

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